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REMARKS

Applicant's undersigned attorney thanks the Examiner for his comments. Applicant respectfully requests reconsideration of this Patent Application, particularly in view of the above Amendment and the following remarks. No additional fee is due for this Amendment because the number of independent claims has not changed and the total number of claims is not more than three.

Amendment to the Claims

Claim 24 has been amended into independent form including limitations of original Claim 1; a combination the first Office Action indicated was allowable. The combination of original Claims 1 and 24 is still believed to be allowable as no new prior art has been applied.

Telephone Interview Summary

Applicant thanks Examiner McKinley and SPE Stashick for their time and courtesies extended during a telephone interview with attorney Mark Swanson on 11 July 2007. Claims 1 and 11 were discussed in view of the Leach Patent and the Stull Patent. Applicant argued that the Leach Patent does not teach a snap hinge. As no agreement could be reached on the meaning of "snap hinge", Applicant proposed adding limitations of Claim 11 into Claim 1. Regarding the rejection of Claim 11 over the Leach Patent in view of the Stull Patent, Applicant argued that modifying the hinge of the Leach Patent with the hinge of the Stull Patent results in a cap having a hinge looking just like the cap of the Stull Patent, which is not flush.

The Examiners argued that Leach shows a flush hinge, and therefore provides motivation for making the hinge of the Stull Patent flush. Applicant argued that Leach doesn't specifically teach seeking a flush hinge, and if it did, no one would substitute the hinge of the Stull Patent. In other words, this

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combination requires a redesign of the hinge of the Stull Patent that is not taught or suggested in the art. Applicant argued that the only place of record where there is a teaching or suggestion to make a snap hinge that does not extend beyond the outer plane of the closure wall comes from Applicant's disclosure. Applicant argued that modifying the Stull Patent hinge for no other reason than to make a rejection of Applicant's claims is a clear example of using hindsight that is improper in nature.

The Examiners could not be persuaded, and no agreement was reached.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1-3, 6-8, 13 and 14 under 35 U.S.C. §102(b) as being anticipated by Leach, U.S. Patent No. 2,961,119, is respectfully traversed.

As previously argued, the Leach Patent does not disclose or suggest a snap hinge, a term that is well established in the art of closures. As is clearly visible in both FIGS. 2 and 5, the member 17 is just a portion of material or bridge having the same thickness and extension as the lateral wall 15, and also has a rather narrow width, so that it is definitely not suited to provide any snap action.

Snap hinges move between stable positions, one of which is the closed position while the other is the open (completely open) position. Positions between open and closed are generally unstable. Upon opening a closure with a snap hinge and exceeding a certain angle (typically about 90°) between the cap and the lower closure part, the elastic forces in the hinge area are acting such that the cap will be further moved to and retained in the open position (e.g., about 180° pivot angle from the closed position between cap and lower part). With a smaller (< 90°) starting angle, the snap hinge will tend to return the cap toward the closed position.

In contrast, with the closure taught by the Leach Patent, the elastic forces acting in simple hinge 17 will always tend to return the cap toward the

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closed position from any open position, thereby impeding the pouring of liquids from a corresponding container if the cap is not actively retained in the open position by the fingers of the users or by any other separate means.

The Office Action counters by stating on page 6 that “[t]he connecting portion 17 is made of elastic material which tends [to] provide a “snap action” when nearing its closed position” This is not supported in the art of record or by logic. As the connecting portion 17 is simply a remaining bridge of the plastic material of the cap of the Leach Patent, the elastic forces pulling the lid toward a closed position would increase the further the cap is opened. Thus if the connecting portion tends toward a position at all, it would always tend toward the closed position, and as the lid approached the closed position, the elastic forces would lessen. Therefore, the Office Action’s alleged snap action is actually opposite of what would be expected, as the closing action of the lid would actually slow as the lid moved toward the closed position, due to the lessening elastic forces. Calling the closing action of the Leach Patent a “snap action” is not supported.

Furthermore, contrary to the Office Action nothing Applicant said supports the Office Action’s allegation. A snap hinge has a position during opening at which past that position the cap tends toward, or “snaps” toward, the open position. It is unreasonable for the Office Action to call the Leach Patent a “snap hinge”.

As the Leach Patent does not disclose or suggest a snap hinge, the Leach Patent does not provide each and every limitation of Claim 1. Favorable reconsideration and withdrawal of this anticipation rejection are respectfully requested.

Claim Rejections - 35 U.S.C. §103

The rejection of Claim 4 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Mueller et al., U.S.

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Patent Publication 2003/0116879, is respectfully traversed. Claim 4 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claim 5 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Harrold et al., U.S. Patent 6,631,820, is respectfully traversed. Claim 5 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claim 9 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Neveras et al., U.S. Patent 5,386,918, is respectfully traversed. Claim 9 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claim 10 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, is respectfully traversed. Claim 10 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claims 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Stull, U.S. Patent 5,437,383, is respectfully traversed. Claim 11 and 12 depend from Claim 1, and are thus patentable for at least the same reasons as Claim 1.

Furthermore, incorporating the snap hinge of the Stull Patent into the closure of the Leach Patent does not provide or suggest Applicant's claimed invention. The Stull Patent teaches that the hinge 36 extends outward beyond the outer surface of the cap wall. There is no teaching or suggestion in the alleged combination to form Applicant's snap hinge with no element of the snap hinge extending outward beyond an outer surface plane of the lateral wall region.

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During the telephone interview, the Examiners argued that because the Leach Patent shows a hinge flush with the lateral wall, this directs the skilled artisan to modify the Stull Patent's hinge to maintain the aesthetically pleasing design. This rationale has at least the following flaws.

First, the Leach Patent doesn't seek to provide a flush hinge, it is just the result of the formation of the simple "connecting portion" hinge. One of ordinary skill in the art would readily appreciate that the connecting portion 17 of the Leach Patent is quite a different hinge structure than the "snap-action hinge" (Abstract) of the Stull Patent.

Second, there is no direction as to how to modify the snap hinge of the Stull Patent so that it does not extend past the outer lateral wall of the closure. In order to meet Applicant's claim limitations, the hinge of the Stull Patent must be redesigned into a different hinge. Only Applicant's disclosure provides the direction for making the modified hinge. However, considering Applicant's Specification in this way is not proper.

Third, the change of design goes against the teaching of the Stull Patent. The Stull Patent teaches a "sealing cap", and the "snap-action hinge is disposed completely exteriorly of the sealing surface so as to not impair the integrity of the seal provided thereby" (Abstract). Moving the hinge towards the interior goes against the teaching of the Stull Patent.

In view of the above, the modification of the Stull Patent hinge in order to make a rejection of Claim 11 is clearly an application of a level of hindsight that is impermissible. Whereas the hinge of the Stull Patent could perhaps be substituted for the connecting portion 17 of the Leach Patent, the alleged further modification of the Stull Patent hinge to meet the limitations of Claim 11 can only be done using improper hindsight by considering Applicant's Specification.

In view of the above comments, favorable reconsideration and an indication of the allowability of Claim 11 is requested. The Examiner is requested to

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contact attorney Mark Swanson at (847) 490-1400 to discuss any additional allowable subject matter.

Allowable Subject Matter

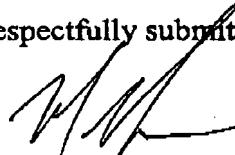
Applicant thanks the Examiner for his effort in identifying that Claims 15-26 contain allowable subject matter. Claim 24 has been amended into independent form. Applicant believes that, in view of the above Amendment and remarks, all claims are now in condition for allowance.

Conclusion

Applicant intends to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicant has not addressed or resolved in this response, the undersigned attorney again requests a telephone interview with the Examiner.

Applicant sincerely believes that this Patent Application is now in condition for allowance and, thus, respectfully requests early allowance.

Respectfully submitted,



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